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Arizona Corporation Commission

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JUL 10 2009

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Attorneys for Applicant,  
 NEWPATH NETWORKS, LLC

## BEFORE THE ARIZONA CORPORATION COMMISSION

Commissioners:

Kristen K. Mayes, Chairman  
 Paul Newman  
 Gary Pierce  
 Sandra D. Kennedy  
 Bob Stump

Docket No. T-20567A-07-0662

**OBJECTION TO APPLICATION  
 FOR INTERVENTION BY NEXTG  
 NETWORKS OF CALIFORNIA,  
 INC. D/B/A NEXTG NETWORKS  
 WEST**

IN THE MATTER OF THE  
 APPLICATION OF NEWPATH  
 NETWORKS, LLC, FOR APPROVAL  
 OF A CERTIFICATE OF  
 CONVENIENCE AND NECESSITY TO  
 PROVIDE TRANSPORT AND  
 BACKHAUL  
 TELECOMMUNICATIONS SERVICES

Channel Law Group, LLP  
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1 Applicant NewPath Networks, LLC ("NewPath") hereby files its Objection  
2 to Application for Intervention filed by the NextG Networks of California, Inc.,  
3 d/b/a Next G Networks West ("NextG") in the above-entitled proceeding before  
4 the Arizona Corporation Commission ("Commission"). NewPath's objections are  
5 based solely on procedural grounds because NextG cannot demonstrate that it is  
6 "directly and substantially affected by the proceedings" and because it is contrary  
7 to Commission policy to convert this case-specific proceeding into a legislative  
8 rulemaking.

9 On May 1, 2009 NextG filed an application to intervene in the above-  
10 entitled proceeding pursuant to AAC R 14-3-105 ("Application"). This rule  
11 permits intervention only by parties who "are directly and substantially affected by  
12 the proceedings. R14-3-105(a). NextG's application to intervene is based  
13 *indirectly* on a concern that it might be impacted by arguments made from a  
14 subsequently withdrawn Hearing Memorandum filed by the City of Scottsdale on  
15 April 29, 2009. Scottsdale's arguments were reintroduced by the Town of  
16 Paradise Valley and the Town of Carefree (collectively "Towns") on June 12,  
17 2009. The Towns purport to challenge the Commission's jurisdiction to grant  
18 NewPath, a private line service provider, a certificate of convenience and  
19 necessity ("CC&N"). Admittedly, the Towns have asked the Commission to  
20 revoke NextG's CC&N, but such a request is specious in that it has no bearing on  
21 NewPath's application and is inappropriately raised in this context. NextG does  
22 not face a properly raised *direct* challenge to its status.

23 In addition, the potential jurisdictional dispute raised by NextG in its  
24

1 Application should not be at issue in this proceeding and is more appropriately  
2 addressed, if at all, in a general proceeding concerning the characterization of  
3 DAS under federal and state law. The Commission by its own Legislative Contact  
4 Policy and Procedure (implemented on December 21, 1999 and revised on August  
5 6, 2003) cannot make substantive modifications to its position on issues without  
6 following the strict procedures defined therein. The Commission has already  
7 determined that it governs private line services, such as DAS, and NewPath's  
8 Application for a CC&N seeks that authorization. Entertaining the arguments of  
9 the Towns and allowing NextG to intervene to further refute those arguments  
10 would convert this proceeding into a policy-making proceeding, in contravention  
11 of the above Legislative Contact Policy and Procedure, and turn a seemingly  
12 simple application for a CC&N into a complex debate on a matter better suited for  
13 a policy making proceeding.

14 The question before the Commission in the above entitled proceeding is  
15 whether or not NewPath should be granted a CC&N. NextG, in response to the  
16 Hearing Memorandums filed by the Towns, appears to be concerned that their  
17 failure to communicate a position on the question of jurisdiction could prejudice  
18 their arguments in a future proceeding or otherwise constitute some form of  
19 waiver. Even assuming these concerns have merit, the act of filing their motion to  
20 intervene has already accomplished that limited goal. There is no need to grant  
21 the motion and raise the possibility of further delay in the Commission's  
22 determination on NewPath's CC&N. Further involvement by NextG in this  
23 proceeding is unnecessary. Regardless of the outcome of this proceeding, NextG  
24

1 will retain its CC&N and all of its attendant rights and obligations. NextG's  
2 CC&N cannot be revoked without due process, which would more appropriately  
3 be the subject of a separate proceeding.

4 Finally, NewPath directs the Commission to its Objections to Applications  
5 for Intervention by the City of Scottsdale, Arizona and the Towns of Paradise  
6 Valley and Carefree, Arizona filed on April 20, 2009 for its analysis in support of  
7 the Commission's jurisdiction over DAS providers.

8 NewPath, by filing this objection, does not waive any rights it has to support  
9 arguments offered by NextG regarding the Commission's jurisdiction over DAS  
10 providers and other providers of private line services.

11 **VI. CONCLUSION**

12 In conclusion, NewPath respectfully objects to NextG's Application for  
13 Intervene and requests the Commission concur with the staff findings and  
14 recommendation of approval of NewPath's CC&N, find that NewPath meets all of  
15 the statutory criteria for a CC&N and expeditiously grant such CC&N.

16  
17 Respectfully Submitted,

18 Dated: July 8, 2009

CHANNEL LAW GROUP, LLP

19  
20  
21 By: 

Martha Hudak  
Attorney for Applicant  
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1 Original and thirteen copies filed this 10<sup>th</sup> day of July, 2009 with:

2

ARIZONA CORPORATION COMMISSION

3 Docket Control

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5 A COPY of the foregoing mailed this 9th day of July, 2009 with:

6 The Honorable Yvette B. Kinsey

Administrative Law Judge

7 Hearing Division

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